

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Maarten Menzo Wentink
Title: TECHNIQUE FOR OPTIMIZING
BACKOFF FOR A SHARED
RESOURCE
Appl. No.: 10/689,018
Filing Date: 10/20/2003
Examiner: Nicholas R. Taylor
Art Unit: 2441
Confirmation Number: 4108

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

REMARKS

In the outstanding Final Office Action of August 27, 2010, the Examiner maintained the rejection of claims 1, 2, 4-7, 13, 17, 22, 25, 28, and 30 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2002/0163929 (Li et al.) and “IEEE 802.11 Protocol: Design and Performance Evaluation of an Adaptive Backoff Mechanism” (Cali et al.) In maintaining this rejection, the Examiner repeated, verbatim, the reasons of rejection presented

in the March 16, 2010 Non-final Office Action. (*See*, pages 3-6 of the March 16, 2010 Non-final Office Action and pages 5-8 of the outstanding Final Office Action.)

Additionally, and in response to Applicant's arguments presented in Applicant's July 12, 2010 Amendment and Reply, the Examiner presented certain other assertions at pages 2-4 of the outstanding Final Office Action. Specifically, the Examiner presented a "response" (A) to Applicant's arguments that neither Li et al. nor Cali et al. teach "determining a first average backoff interval by measuring an average wait time that the first station incurred during a plurality of previous access attempts to the shared resource;" and "refraining from contending for access to the shared resource for at least an interval substantially equal to the first average backoff interval."

However, the Examiner's response at pages 2-3 of the outstanding Office Action (which purportedly "addresses" Applicant's arguments) is merely a near-verbatim parroting of the reasons of rejection previously presented in the March 16, 2010 Non-final Office Action, and as indicated above, repeated in the outstanding Final Office Action. (*See*, pages 3-4 of the March 16, 2010 Non-final Office Action and pages 5-6 of the outstanding Final Office Action.) The only "new" assertion made by the Examiner is the statement at page 3 of the outstanding Office Action that "[t]he backoff value is adjusted based on incurred average wait time that the stations incur... to prevent further congestion." Yet, Applicant submits that this statement is merely an attempt at paraphrasing the relevant limitation in, e.g., independent claim 1 of the present application. Although the Examiner indicated that this assertion was supported by paragraphs [0014]-[0016] and [0059]-[0064] of Li et al., as already argued by Applicant in the July 12, 2010 Amendment and Reply, support for the Examiner's assertions cannot be found in these or other sections of Li et al. (*See*, pages 11-13 of Applicant's July 12, 2010 Amendment and Reply.)

Further still and at page 3 of the outstanding Office Action, the Examiner's response contains another verbatim repetition of the Examiner's alleged "broadest reasonable interpretation of the claim term 'average wait time.'" (*See, e.g.*, page 3 of the Final Office Action dated November 10, 2009, and quoted and rebutted at page 14 of Applicant's July 12,

2010 Amendment and Reply.) Moreover, the Examiner asserted that Applicant's arguments that the claimed "average wait time" limitation is, e.g., more specific, excludes collision counts, etc. are not supported by the actual claim language. This is another verbatim repetition of the Examiner's arguments presented at page 3 of the November 10, 2009 Final Office Action.

Additionally still, at page 3 of the outstanding Office Action, the Examiner yet again, essentially repeated the reasons of rejection already presented at, e.g., page 4 of the March 16, 2010 Non-final Office Action and page 6 of the outstanding Final Office Action. The only "new" assertion presented by the Examiner is that allegedly, "Li instead draws on a broader range of average wait times in calculating a first average backoff interval." However, neither the repeated assertions nor this "new" statement rebuts or addresses Applicant's arguments at page 15 of Applicant's July 12, 2010 Amendment and Reply calling out the Examiner's contradictory position and the deficiencies of Cali et al.

In light of the above, Applicant submits that the outstanding Final Office Action is in clear and direct violation of Section 707.07(f) of the MPEP which states that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." (emphasis added). In this instance, and as discussed above, the Examiner merely presented assertions that essentially parroted the Examiner's previously presented arguments/rejections in either the November 10, 2009 Final Office Action, the March 16, 2010 Non-final Office Action, and/or the outstanding Final Office Action without substantially answering or rebutting any of Applicant's arguments, or provide further support for the Examiner's alleged positions/interpretations. Therefore, Applicant submits that the outstanding Final Office Action is improper with respect to claims 1, 2, 4-7, 13, 17, 22, 25, 28, and 30 in that it is unresponsive to any of Applicant's arguments and in violation of Section 707.07(f) of the MPEP. Moreover, Applicant incorporates herein by reference in their entirety, Applicant's arguments previously presented in Applicant's July 12, 2010 Amendment and Reply.

At page 4 of the outstanding Final Office Action, the Examiner presented another “response” (B) to Applicant’s arguments set forth in Applicant’s July 12, 2010 Amendment and Reply. Specifically, the Examiner indicated that his assertions were meant to address Applicant’s argument that “[t]he prior art of Li and Cali are not obvious to combine, as the references teach away from any reasonable combination.”

First, and like the Examiner’s previous responses discussed above, response (B) merely repeats the Examiner’s reasons for rejection at, e.g., pages 4-5 of the March 16, 2010 Non-final Office Action and pages 6-7 of the outstanding Final Office Action.

Second, Applicant submits that the arguments presented in Applicant’s July 12, 2010 Amendment and Reply regarding the alleged combination of Li et al. and Cali et al., were not directed to either reference “teaching away” from the other. Rather, and as clearly indicated at pages 15-16 of Applicant’s July 12, 2010 Amendment and Reply, Applicant then submitted and now submits again that even if the teachings of Li et al. and Cali et al. “could” be combined, the resulting combination would not arrive at the claimed embodiments disclosed in independent claims 1, 13, and 22 of the present application.

Hence, Applicant again submits that the outstanding Final Office Action is improper in that it is unresponsive to any of Applicant’s arguments and in violation of Section 707.07(f) of the MPEP. Moreover, Applicant incorporates herein by reference in their entirety, Applicant’s arguments previously presented in Applicant’s July 12, 2010 Amendment and Reply.

In the outstanding Final Office Action, the rejection of claims 3, 8-12, 14, 18, 21, 23, 26, 27, 29, and 31 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Li et al., Cali et al., and further in view of “PAMAS – Power Aware Multi-Access Protocol with Signaling for Ad Hoc Networks” (Singh et al.) was also maintained. In maintaining this rejection, the Examiner repeated, verbatim, the reasons of rejection presented in the March 16, 2010 Non-final Office Action. (See, pages 6-12 of the March 16, 2010 Non-final Office Action and pages 9-14 of the outstanding Final Office Action.)

Although Applicant presented detailed arguments at pages 16-18 of Applicant's July 12, 2010 Amendment and Reply directed to rebutting the above rejection, the Examiner offered no response. Instead, the Examiner merely repeated his previously asserted reasons for rejection. Therefore, Applicant submits that the outstanding Final Office Action is again, in clear and direct violation of Section 707.07(f) of the MPEP which states that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." (emphasis added). In this instance, and as discussed above, the Examiner merely parroted his previously presented arguments in both the March 16, 2010 Non-final Office Action, and the outstanding Final Office Action without substantially answering or rebutting any of Applicant's arguments, or provide further support for the Examiner's alleged positions/interpretations. Therefore, Applicant submits that the outstanding Final Office Action is improper with respect to claims 3, 8-12, 14, 18, 21, 23, 26, 27, 29, and 31 in that it is unresponsive to any of Applicant's arguments and in violation of Section 707.07(f) of the MPEP. Moreover, Applicant incorporates herein by reference in their entirety, Applicant's arguments previously presented in Applicant's July 12, 2010 Amendment and Reply.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance.

Respectfully submitted,

Date October 19, 2010

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